IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 1998 of 2001
AND
Criminal Appeal No.1993 of 2001

Date of decision :-07.08.2007

(Approved for Reporting)

~~Not approved for reporting~~

Date :-07.08.2007 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 1998 of 2001

1. Islam @ Shamim s/o late Shri Mahmood
2. Naved S/o Shri Islam @ Shamin
   Both R/o village Akbarpur Dhadheki
   P.S. Manglore
   District Haridwar ...Appellants

Versus

State ... Respondent

AND

Criminal Appeal No. 1993 of 2001

Shahid @ Kallu
S/o Shabbir
R/o Village Akhbarpur Dhadheki
P.S. Manglore
District Haridwar ...Appellant

Versus

State ... Respondent

Delivery of Judgment : 07th August, 2007

Mr. Shashi Kant Shandilya learned Advocate for appellants Islam @ Shamim and Naved.
Mr. Shashi Kant Shandilya learned Amicus Curiae for appellant-Shahid @Kallu.
Mr. G. S. Sandhu learned Govt. Advocate with Mr. B. S. Parihar learned Brief Holder for State.
Mr. S. P. S. Panwar learned senior Advocate with Mr. Sachin Panwar learned Advocate for the complainant.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J. C. S. Rawat, J.

1. Since both these criminal appeals have arisen out of the common impugned judgment & order dated 22.10.2001 passed by Sri Jaidev Singh, the then Addl. Sessions Judge, Roorkee (Haridwar) in S.T. No.77 of 1995 and No. 76 of 1995, hence these appeals have been heard together and are being disposed of by this common judgment. By the impugned judgment and order, the appellants-Islam @ Shamim, Naved and

Shahid @ Kallu were convicted under section 302 read with section 34 IPC and each of the appellants were sentenced to undergo imprisonment for life under section 302/34 IPC and to pay fine of Rs.30,000/- each. In default of payment of fine under section 302/34 IPC, each of the appellants were to undergo for further three years S.I. The appellant Shahid @ Kallu was also convicted and sentenced to undergo for a period of one year R.I. and to pay fine of Rs.3000/- under section 25 Arms Act. In default of payment of fine under section 25 Arms Act, the appellant Shahid @ Kallu was to undergo for further three years S.I. Both the sentences were to run concurrently.

2. Brief facts for disposal of these two appeals are that on 03.11.1994 three murders were committed by the appellants-accused at three different places.

(A) On 03.11.1994 at about 12:30p.m. Mansab PW3 and Rashid Ahmad PW4 were coming from Manglaure to their house on a bicycle and deceased Hanif was also coming with them on his bicycle. When they reached near 'Bhatta' at Nanheda Manglore road appellants-accused Islam @ Shamim, Naved and Shahid @ Kallu all of a sudden appeared there from the eucalyptus trees. The appellants came there on their bicycles. Islam @ Shamim was armed with double barrel gun (D.B.B.L.), whereas Naved and Shahid @ Kallu were armed with country-made pistols. All the appellants-accused started firing upon Hanif due to which he sustained injuries and fell from the bicycle

and died at the spot. Mansab PW3 and Rashid Ahmad PW4 are the eye-witnesses of the murder of Hanif.

(B) Thereafter, on the very same day at about 1p.m. the appellants-accused went on their bicycles to the house of Mohd. Hashim PW1 where Yasin was present in his 'varanda'. Islam @ Shamim and Naved fired upon Yasin, but he did not sustain any fire-arm injury at that time. Deceased Yasin rushed towards the north and the appellants-accused chased him. Mohd. Hashim PW1 also ran towards them alongwith Rahil PW2 and one Mehboob. A little later the appellants-accused again fired gun-shots upon Yasin who fell down on the ground due the fire-arm injuries sustained by him. Appellant Naved also caused injuries on the head and chest of deceased Yasin with '*Palkati*' (a sharp edged weapon). In this way, the appellants-accused committed the murder of Yasin at about 1p.m. on same day. Mohd. Hashim PW1 and Rahil PW2 were the eye-witnesses of the incident in which Yasin was murdered by the appellants.

(C) After committing the murder of Yasin, the appellants-accused went to the fields where Mursalin PW6 alongwith his brother Anis was cutting the crop. The appellants-accused told them that they have killed Hanif and Yasin and they would kill them also. The appellants-accused then started firing upon

them due to which Anis sustained injuries on his person and died at the spot.

(D) On same day at 2:20p.m. informant Mursalin s/o Hanif lodged the written report Ex.ka.1 at the police station Manglore alleging therein that the ancestral property was partitioned between his father Hanif (deceased) and uncle Islam @ Shamim (appellant).His uncle Islam @ Shamim also got one tube-well in his share. There was an outstanding dues of the electric charges which was to be paid by the accused Islam @ Shamim but he did not pay the dues so the recovery proceedings were started against deceased Hanif as the electricity connection of this tube-well was in the name of Hanif. After 10 years of partition, a sum of Rs.31,000/- towards the electric charges were paid by the father of the informant. The payment of electric bill was due on Islam @ Shamim and the father of the informant asked Islam @ Shamim to give money which was paid by him towards the electric bill. When he did not pay the outstanding bill, Mohd. Hanif got it disconnected. Due to this reason, there was enmity between them. On the basis of the written report, a case was registered against the accused persons under section 302 IPC. The investigation was entrusted to S.O.-R.K. Singh Yadav. The Investigating Officer prepared the inquest reports of the three deceased (Anis, Yasin & Hanif) and sent the deadbodies for postmortem. He took the

sample of blood stained earth and plain earth from the place of occurrence. He also recorded the statement of the witnesses. He also prepared the site plan. After completing the investigation, the Investigating Officer submitted the chargesheet before the court against the appellants Islam @ Shamim, Naved and Shahid @ Kallu under section 302 IPC.

3. After submission of chargesheet the appellants-accused were committed to the court of Sessions for trial and the trial court framed charges against the accused persons. They denied the charges levelled against them and claimed their trial.

4. The prosecution in support of its case examined as many as fourteen witnesses, Mohd. Hashim PW1 and Rahil PW2 are eye-witnesses of the incident in which Yasin was murdered by the appellants. Mansab PW3 and Rashid Ahmad PW4 are eye-witnesses of the murder of deceased Hanif. Jabir PW5 and Mursalin PW6- informant are eyewitnesses of the murder of Anis. Mursalin PW6 claimed that when the appellants fired upon them, he ran away from the spot and he sustained the injuries on his person by coming to the contact of trees and bushes. Dr. Virendra Kumar Sharma PW7 was the Medical Officer who conducted the postmortem of deceased Anis, Hanif and Yasin. Dr. R. D. Chaudhary PW8 was the Medical Officer who examined the injuries of informant Mursalin PW6. Constable Vinod Kumar PW9 took the dead bodies for postmortem. Head Constable Kailash Chand Tyagi

PW10 has proved the chick FIR. He also proved the G.D. entry. S.I.-Ram Kumar PW11 was the Investigating Officer of this case. In his presence the case was registered in the police station against the appellants. He also visited the spot and recorded the statement of the informant. S.I. Sukhvir Singh PW12 prepared the inquest report on the direction of S.O.-R. P. Singh. He proved the panchayatnama. Constable C.P. Gangadas PW13 alongwith arresting officer recovered one country-made pistol 315 bore from the possession of Shahid @ Kallu and on the basis of said recovery he registered a case against Shahid @ Kallu under section 25 Arms Act. S.I.-Yogendra Kumar Sharma PW14 was the Investigating Officer of the case registered against Shahid @ Kallu under section 25 Arms Act.

5. The accused persons were examined u/s 313 Cr.P.C. and they have pleaded not guilty to the offence. They have stated that they have been falsely implicated in this case. Appellant Naved has stated that he was a 'child' being about 13½ years of age at the time of incident.

6. The learned trial court on appreciation of the evidence held the appellants guilty and convicted and sentenced them as mentioned above.

7. We have heard learned counsel for the parties and perused the record carefully.

8. It needs to be mentioned here that it is not disputed that deceased Hanif died on account of firearm

injuries sustained by him on the date of occurrence. Dr. Virendra Kumar Sharma PW7, Medical Officer conducted the postmortem of deceased Hanif on 04.11.1994 and found following ante-mortem injuries on the person of deceased Hanif:-

(i) Firearm wound of entry 5cm x 4cm x right temple deep in font of right ear x skull & brain deep. Burning present round the wound margins inverted.

(ii) Fire arm wound of exit 10 cm x 9cm x skull & brain deep. Margins inverted; on left side face & skull. Brain matter open coming out. Skull left side bones fractured with both jaws left side & upper jaw right side.

(iii) Fire arm wound of entry 1.5cm x ½cm x chest on right side front of it 5cm from right nipple at 5 o'clock position. Margins inverted.

(iv) Firearm wound of exit 3cm x 2cm x chest right side lower part of back of chest 2cm from midline. Injury no.3 communicating to 4. Margins inverted.

In the opinion of Medical Officer, the death of deceased might have occurred before 12 hours. It was further stated by him that the death might have occurred at about 12:30p.m. on 03.11.1994. It was further opined that the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem injuries.

9. Deceased Yasin died on account of fire-arm injuries sustained by him on the date of occurrence. Dr. Virendra Kumar Sharma PW7, Medical Officer conducted the postmortem of deceased Yasin on

04.11.1994 at 1:50pm and found following ante-mortem injuries on the person of deceased Yasin:-

(i) Incised wound 4cm x 1 cm muscle deep on top of head.
(ii) Fire arm wound of entry x 1½ cm x bone deep on right side of face 2cm from right ear. Profound wound present. Margins inverted.
(iii) Fire arm wound entry 1cm x bone deep on right side forehead just above right eye brow. Margins inverted.
(iv) Fire arm wound of 10cm x 8cm x brain & skull deep on left side head. Margins inverted. Skull bone fractured. Brain matter coming out. Injury no.2 & 3 communicating to no.4.
(v) Fire arm wound of 2½ cm x 2½cm x chest deep on front & left side of chest 9cm below middle. Wound of entry margins inverted
(vi) Fire arm wound of entry 4cm x 2.5cm x chest deep of left side back 4cm below the scapula. Margins inverted. no.5 communicating to no.6.
(vii) Incised wound 2cm x 1cm x chest deep, transverse, tailing right side upwards.

In the opinion of Medical Officer, the death might have occurred at about 1:00p.m. on 03.11.1994. It was further opined that the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem injuries. Thus, it is amply established that deceased-Yasin died on account of fire-arm injuries sustained by him on the date of occurrence.

10. Dr. Virendra Kumar Sharma PW7, Medical Officer conducted the postmortem of deceased Anis on

04.11.1994 at 12:30 p.m. and found following ante-mortem injuries on the person of deceased Anis:-

(i) Lacerated wound 4cm x 2cm x neck left side of it margins inverted. Blackening tattooing scratching not present. Wound of entry.

(ii) Lacerated wound 5cm x 3cm neck deep on front of neck. Margins inverted carotid and trachea cut. Wound of exit injury no.1. communicating to injury no.2

(iii) Lacerated wound 1cm x 1cm x muscle on top of right shoulder. margins inverted. One bullet recovered from this wound.

(iv) Lacerated wound 6cm x 2cm x chest deep right side fron t of chest just above right clavical. margins inverted. Injury no.3 communicating to it. The bullet written in No.3 actually recovered at muscles of injury no.4

(v) Lacerated wound 1cm x 1cm x neck deep on left side. margins inverted wound of entry.

(vi) Lacerated wound 7cm x 3cm x chest deep in front of chest on right side, near to injury no.2 (adjacent) margins inverted. Wound of exit no.5 communicating to injury no.6.

(vii) Lacerated wound 1cm x 1.75cm x chest deep 7cm below from right nipple. Burning present round the wound. Bullet recovered on left side deep below skin in parallel transverse line to injury no.7. margins inverted wound of entry.

(viii) Lacerated wound 1cm x 1cm x muscle deep on left forearm in middle. Margins inverted. wound of entry.

(ix) Lacerated wound 2cm x 2cm x muscle deep of right forearm in middle. Margins inverted injury no.9 communicating to injury noi.8 wound of exit.

(x) Lacerated wound 1cm x 1cm on right side of back & muscle deep. Margins inverted. wound of entry. Bullet

recovered on right side in upper part, just below the inferior of right scapulla.

(xi) Firearm wound of entry 1½ cm x 1½cm x chest cavity deep at line with mid axillary line margins inverted.

(xii) Firearm wound of exit 2½cm x 2cm x chest deep back of chest. Margins inverted no.12 communicating to no.11.

(xiii) Firearm wound of entry 2½ cm x 1½cm x abrasion mark left side. margins inverted.

(xiv) Firearm wound of exit 4cm x 3cm x abdominal cavity deep axillary line with ext. in lower part of it. margins inverted. no.14 communicating to no12.

In the opinion of Medical Officer, the duration of death of the deceased was about half day old. The medical officer has also stated in his evidence that the death of deceased Anis might have occurred before 12 hours. It was further stated by him that the death might have occurred at about 1:30p.m. on 03.11.1994. It was further opined that the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem fire-arm injuries.

11. Thus, it is amply established that deceased Hanif, Yasin and Anis died on account of fire-arm injuries sustained by them on the date of occurrence. These three deceased persons were shot dead within a span of one hour at three different places. Now, we have to consider whether the appellants-accused were responsible for causing death of these deceased persons. We will deal with the evidence of each incident separately.

12. We will first deal the incident in which deceased Hanif was shot dead. The prosecution has adduced the evidence of Mansab PW3 and Rashid Ahmad PW4 who are the eye-witnesses of the murder of deceased Hanif. Mansab PW3 and Rashid Ahmad PW4 has stated in their evidence that they knew accused persons Islam @ Shamim, Naved and Shahid @ Kallu as they belonged to their village. Both the witnesses have further stated in their evidence that they knew deceased Hanif also since before. They have further stated that on date of incident they were coming from Manglore to their houses on a bicycle and deceased Hanif was also coming with them on other bicycle. At about 12:30p.m. when they reached near 'Bhatta' at Nanheda Manglore road, the appellants-accused were present near the eucalyptus trees alongwith their bicycles. Appellant Islam @ Shamim was armed with 'D.B.B.L. Gun' while Shahid @ Kallu and Naved were armed with country-made pistol. When they moved ahead, all the appellant-accused fired upon Hanif due to which he sustained injuries on his person and fell down from his bicycle and died at the spot. Thereafter, the appellants-accused ran away from the spot towards Akbarpur. Both the witnesses have further stated in their evidence that they did not chase the accused persons due to fear. They have further stated that when they reached near the village, they came to know that the accused persons have also killed Yasin. Thereafter, they informed about the incident to Mursalin PW6. Mansab PW3 and Rashid Ahmad PW4 have corroborated the evidence of each other. They were coming to the village alongwith deceased Hanif

and they have narrated the entire incident as to how it happened.

13. In order to prove the incident in which Yasin was shot dead by the appellants-accused, the prosecution has adduced the evidence of Mohd. Hashim PW1 and Rahil PW2 who were said to be the eye-witnesses of the incident. Mohd. Hashim PW1 has stated in his evidence that he knew the accused Islam @ Shamim, Naved and Shahid @ Kallu since before as they belonged to his village. On the date of incident i.e. 03.11.1994 deceased Yasin was sitting in his 'varanda'. Appellants Islam @ Shamim, Naved and Shahid @ Kallu armed with fire-arms came there. Accused Islam @ Shamim was armed with a gun, whereas accused Shahid @ Kallu and Naved were armed with country-made pistols in their hands. Thereafter, appellants Islam @ Shamim and Shahid @ Kallu fired upon deceased Yasin, but he did not sustain any fire-arm injury at that time. Deceased Yasin rushed towards the north and the appellants-accused chased him. Mohd. Hashim PW1 also ran towards them alongwith Rahil PW2 and one Mehboob. A little later the appellants again fired upon Yasin who fell down on the ground due to the fire-arm injures sustained by him. Mohd. Hashim PW1 has further stated in his evidence that he raised hue and cry. Appellant Naved also caused injuries on the head and chest of Yasin by '*Palkati*' (a sharp edged weapon). Thereafter, the appellants-accused ran away from the place of occurrence. He has further stated that he narrated the entire story to Mursalin PW6 who came there after the incident. Mursalin PW6 has also stated to him that the accused persons have also killed Anis.

Mohd. Hashim PW1 has further stated to Mursalin PW6 that Naved has assaulted the deceased with 'Palkati' and other accused persons fired upon the deceased with the gun and country-made pistol. Rahil PW2 has corroborated the statement of Mohd. Hashim PW1 and narrated the entire incident as narrated by Mohd. Hashim PW1.

14. The prosecution has adduced the evidence of Jabir PW5 and Mursalin PW6-informant who are said to be the eyewitnesses of the murder of Anis. PW5 Jabir has stated in his evidence that he was working in the field alongwith his brother. He further stated that at about 1:30 Mursalin PW6 was also working in the field alongwith deceased Anis. Appellants Shahid @ Kallu and Naved armed with country made pistol and accused Islam @ Shamim armed with D.B.B.L. gun reached nearby the field of Mursalin and Hanif on their bicycles. The appellants accused shouted upon Anis deceased and Mursalin PW6 and told them that they have killed Hanif and Yasin and they would kill them also. Thereafter, the appellants fired upon Anis due to which Anis sustained fire-arm injuries. In order to escape from the assault, Mursalin PW6 and Anis tried to run away from there, but Anis fell down on the ground. The appellants again fired upon him. Anis died due to the fire arm injuries sustained by him. Mursalin PW6 who is the informant has also corroborated the evidence of PW5 Jabir.

15. Learned counsel for the appellants contended that the prosecution witnesses had admitted that there were other persons who had seen the incidents of the

murders of the deceased persons, but they were not produced before the court. It was further contended that the prosecution has not produced any independent witness to corroborate the fact of incidents. It was further contended that the eye-witnesses of the prosecution are interested witnesses as some of them are related to the deceased persons. Mursalin PW6 is the son of Hanif and brother of Anis. It was further contended that all the eye witnesses belonged to the village Akbarpur and all of them are either neighbours or relatives of the deceased persons. The prosecution has failed to adduce the evidence of other persons who were present at the scene of occurrences. Learned G.A. refuted the contention. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining, the prosecuting case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. If already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In determining as to whether any witness is necessary or not, the court should ask itself as to whether in the facts and circumstances of the case it was necessary to examine

such other witnesses, and if so whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable/trustworthy and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 6 eye-witnesses – two each of the three incidents – whose presence at the place of the incidents cannot be doubted at all. The genesis of the incidents is brought out by these witnesses. The learned trial court has on appreciation of evidence held that the murder of Hanif took place near the 'Bhatta' Nanheda Manglore road on 03.11.1994 in presence of Mansab PW3 and Rashid Ahmad PW4; the murder of Yasin took place on 03.11.1994 at about 1p.m. in presence of Mohd. Hashim PW1 and Rahil PW2; and the murder of Anis took place on the same day at about 1:30p.m. in presence of Jabir PW5 and Mursalin PW6. Nothing more could have been revealed by other people who were present at the three spots. The trial court has minutely scrutinised the statements of all the eyewitnesses and found them consistent and reliable. We do not find any infirmity in the findings recorded by the trial court. With the assistance of the leaned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses consistent and reliable in their narration of the incidents. Moreover, it is a well settled position of law that it is not always necessary to multiply the evidence of the incident on the same point.

It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. If the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy then increase in the number of witnesses cannot be the requirement of the case. It has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal cases because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the witnesses avoid to come to the court. The evidence of prosecution witnesses is consistent and nothing had been elicited from their cross examination which may render their evidence unreliable. The evidence of the prosecution witnesses is credible and cogent. We are fortified in our view by the dictum of Hon'ble Supreme Court in **Komal and others Vs. State of U.P. 2002 SCC (Cri) 1600** which is as under:-

> *"11. Learned counsel next contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of the prosecution party were begin assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view, non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs 2 and 4, the two injured eye witnesses who had received multiple injuries, has been found to be trustworthy and their evidence is corroborate by the informant PW 5 and supported by medical evidence as well as objective finding to the investigating Officer."*

16. It has been further held in **Babu Ram vs. State of U.P. 2002 SCC (Cri) 1400** as under:-

> *"7. It is was submitted by the learned counsel for the appellants that Ram Autar, an independent eye witness present at the scene of occurrence according to the prosecution case and a government servant has not been examined, and therefore, an adverse inference should be drawn against the prosecution. It is settled law that non-examination of an eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eye witnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. In the case at hand we additionally find from the testimony of Ashrafi Lal that in spite of being a government servant and not involved in local village disputes he is afraid of deposing against the accused persons and there is substance in the submission of the learned counsel or the State that Ram Autar if tendered in the witnesses box would have followed the same track as was chosen by Asharfi Lal P.W.3."*

In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case.

17. So far as the contention regarding the interested or related witnesses is concerned, it is true that Mursalin PW6 is related to Hanif & Anis; and Rahil PW2 is the son of deceased Yasin, but the evidence of eye-witnesses cannot be discarded on this ground alone. It is also pertinent to mention here that deceased Hanif and Isalm @ Shamim are the real brothers and Naved is the nephew of deceased Hanif. The appellants-accused also belonged to the same village i.e.

Akbarpur. True, the witnesses are related to the deceased but on the other hand these witnesses are also related to the accused persons. There is no rule of law or prudence which requires that the evidence of a close relation must be discarded for the simple reason i.e. they are related to each other. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished. The Hon'ble Apex Court has held in **Munshi Prasad Vs. State of Bihar 2002 SCC(Cri) 175 :-**

> *"The issue, therefore, is whether the evidence available on record is otherwise trustworthy and an acceptable piece of evidence: in the contextual facts the answer is in the affirmative and both the trial court and the High Court have also considered the same to be so.*
>
> *(ii)A complaint focused that except the interested witnesses none else from the nearby residential areas has been examined – this is so: it is the quality of the evidence and not the quantity, which is required. The crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record – if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case……"*

18. In the case of **State of Punjab Vs. Karnail Singh** reported in **2004 SCC (Cri) p/135** the Hon'ble Apex Court has held as under:-

> *"8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab reported in AIR*

1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., it was observed: (AIR p. 366:-

> *25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavored to dispel in – Rameshwar v. State of Rajasthan reported in AIR 1952 SC 54 (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."*

9. Again in Masalti v. State of U.P. AIR 1965 SC 202 this Court observed:-

> *"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."*

19. The Hon'ble Apex Court has held in **Kulwant Singh @ Kulbansh Singh Vs. State of Bihar 2007 AIR SCW 4124** that :-

> *"9. There is no proposition is law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to*

shield the actual culprit and falsely implicate the accused. No evidence has been led in this regard."

We, therefore, do not find any force in the contention raised by learned counsel for the appellants.

20. Learned counsel for the appellant-accused further contended that there are contradictions and exaggerations in the testimony of the prosecution witnesses. Learned counsel for the appellants-accused pointed out certain contradictions in the testimony of the witnesses. Learned G.A. refuted the contention. The learned trial court had dealt this argument in its judgment and held that the contradictions pointed out from the evidence of the prosecution witnesses were not material to discredit the testimony of the witnesses. A person cannot accurately recall a conversation and reproduce the very words used by him or heard by him. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. If the contradictions are there it does not affect the prosecution story, the courts should not take into account such minor discrepancies, which are bound to come in the truthful testimonies. The normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. The discrepancy as pointed out by the defence is of no consequence. We have gone through the entire evidence and the contradictions pointed out

by the learned counsel for the appellants. It is pertinent to mention here that the incidents took place on 03.11.1994 and the evidence of Mohd. Hashim PW1 was recorded on 02.02.1998 after a lapse of 4 years and it continued for two days and his evidence concluded on 03.02.1998. The evidence of Rahil PW2 was recorded on 03.02.1998 and his cross examination was recorded on 12.02.1998. The evidence of Mansab PW3 was started to be recorded on 12.02.1998 and thereafter the cross examination was deferred and it was adjourned for 27.02.1998. His evidence was concluded on 27.02.1998. The evidence of Rashid Ahmad PW4 was recorded on 27.02.1998 and the cross examination was deferred for 02.03.1998. But later on his cross examination was started on 26.10.1998 and it was concluded on the same day. The evidence of Jabir PW5 was recorded on 27.10.1998 and the cross examination was deferred on the ground that some applications of the accused were moved. Thereafter, the cross examination of PW5 started on 27.10.1998 which concluded on the same day. Mursalin PW6 was examined by the prosecution and his cross examination was deferred for 02.11.1998. The witness was cross examined on 02.11.1998 and he was again recalled on 13.03.2000 and his cross examination was again recorded. It is evident from the above that the evidence of eye witnesses was recorded after a lapse of 4 years of incidents. It is pertinent to mention here that when a witness appears before the court, sometimes he may not stand the test of cross examination, which may be sometimes, because he is a bucolic person and is not able to understand the question put to him by the skilful cross-examiner and

at times under the stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. (vide **Krishna Mochi Vs. Vs. State of Bihar 2002 (6) SCC p/81.)** The Hon'ble Apex Court has held in **Munshi Prasad (supra)** as follows :-

> *"10. ..... Incidentally, be it noted that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record. In this context reference may be made to two decisions of this Court. The first being State of U.P. v. M.K. Anthony 1985 SCC(Cri) 105 as also a later one in the case of Leela Ram v. State of Haryana 2000 SCC(Cri) 222. Needless to record that difference in some minor detail, which does not otherwise affect the core of the prosecution case, may be there but that by itself would not prompt the court to reject the evidence on minor variations and discrepancies. In Leela Ram (supra) this Court observed in para 10 of the Report: (SCC pp. 532-33)*
>
> *" 10. * * *
>
> ' 24 . When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in*

jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

This Court further observed:

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

"155. Impeaching credit of witness .– The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party, who calls him– (1)-(2)
(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26 . A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.
27 . To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that

witness (vide Tahsildar Singh v. State of U.P. AIR 1959 SC 1012"

21. After considering the evidence in-toto, the trial court found the evidence to be implicitly truthful and reliable, though, the presence of eye witnesses was attempted to be shown as doubtful. We do not find any reason to accept the plea. Their presence at the place of occurrences was explained and their evidence cannot be thrown out as unreliable or tainted because some of the eye witnesses are related to the deceased persons. The manner of assaults as described by the prosecution witnesses has been corroborated by the medical evidence. We have gone through the entire oral evidence and found that whatever was stated by way of clarification and contents cannot be termed to be an improvement or contradictions. Learned counsel for the appellants contended that the eyewitnesses cannot be believed for so many reasons, main among which is that they made improvements on their version to suit the prosecution case. We have gone through the entire evidence and noticed that though there were some marginal variations on certain aspects in between the statements recorded under Section 161 of the Code of Criminal Procedure and the testimony given in court, such variations cannot be dubbed as improvements made with any sinister motive. The witnesses have made certain clarifications during the course of evidence. They are elaborations elicited by the Public Prosecutor during the evidence. It is the prerogative of the Public Prosecutor to elicit such points from a witness as he deems necessary for the case. No Public Prosecutor can be nailed to the statement recorded under Section 161 of the Code. We scrutinised the so-

called improvements from that angle and we are satisfied that the eyewitnesses had basically remained at the same position which they have stated in their statements recorded under section 161 Cr.P.C We, therefore, do not find any force in the contention raised by learned counsel for the appellants.

22. It was further contended that the police had recorded the statement of eye witnesses under section 161 Cr.P.C. after a lapse of 1½ month. It was further contended that the prosecution has not given any satisfactory explanation for such delay in recording the statements under section 161 Cr.P.C. It was further contended that the accused have taken a case by way of suggestion that the eye witnesses were not ready to depose against the appellants at the initial stage, so their statements were not recorded by the police. But, at the later point of time they agreed to give evidence. Learned G.A. refuted the contention. The approach of the learned trial court discarding the contention was correct both on legal and factual aspects in this regard. No question was put to I.O. Ram Kumar PW11 with regard to the cause of delayed examination under section 161 Cr.P.C. it is pertinent to mention here that all the accused persons have been named in the FIR. The informant himself has seen one of the occurrences in which deceased Anis was shot dead by the accused persons. It has also been indicated in the FIR that after the murder of deceased Anis when he came to village to inform about the incident he was informed by Rahil PW2, Mohd. Hashim PW1 and one Mehboob that deceased Yasin had already been shot dead by the accused. When he was being informed about the

murder of Yasin, Mansab PW3 and Rashid Ahmad PW4 came to him and informed that his father had already been shot dead at about 12:30 pm on the Manglore road. Thus, the FIR contains all the names of eye-witnesses who have been produced before the trial court. The FIR of the incidents was lodged immediately at about 2:20pm at the police station. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. It is pertinent to mention here that there is a prompt FIR of the incidents by Mursalin PW6 who lodged the report at 2:20p.m. at the police station. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them as also the names of the eye witnesses, if any. The Hon'ble Apex Court has held in **Dr. Krishna Pal & another Vs. State of U.P. 1996 SCC (Cri) 249 :-**

> ***"9.*** *After considering the respective submission made by the learned counsel for the parties and also the evidences adduced in the case through which we have been taken, it appears to us that PWs 2, 3 and 6 namely Ram Saran, Attar Singh and Dr Rajveer Singh have clearly established the prosecution case that the appellants caused the murder of the deceased on 11-10-1978 by inflicting successive knife blows on his person. It appears to us that PW 1 Zile Singh, the uncle of the deceased, is not an eyewitness of the occurrence but having received information, he came to the spot and then dictated the fardbayan on the basis of the report received by him. It has also come out in the evidence that a number of*

persons were present at the place of occurrence when Zile Singh reached there and he talked to them including Dr Rajveer Singh. In the aforesaid circumstances, it is not unlikely that Zile Singh had not felt the need to specifically enquire from Dr Rajveer Singh as to whether he had seen the assailants. It is also unlikely that Dr Rajveer Singh also did not feel any necessity to give the names of the assailants because such names had already been given by other eyewitnesses present there. In the instant case, no explanation has been given by the prosecution as to why eyewitnesses had not been examined shortly after the incident and from the materials on record it appears that there had been inordinate delay in examining the eyewitnesses. But simply on that account, the convincing and reliable evidences adduced in this case should not be discarded."

23. The Hon'ble Apex Court has held in **Ramesh Vs. State of M.P. 2000 SCC (Cri) 206** that :-

> *"6. Mr Naik then placed before us the evidence of the three eyewitnesses and contended that their evidence does not inspire confidence and should be rejected. Normally, this Court, sitting in appeal against the conviction passed by the Sessions Judge and upheld in appeal, does not reappreciate the evidence of the witnesses again. But the evidence having been placed before us and having been argued at length by the learned Senior Counsel, we have scrutinised the same. Nothing substantial has been brought to our notice in the cross-examination of these witnesses for which this Court would come to the conclusion that the witnesses are not believable. As stated earlier, PW 1 was accompanying the deceased right from the beginning when the deceased had gone to supply milk and was proceeding to offer "puja" and PWs 2 and 4 are independent witnesses who happened to be at the scene of occurrence and have narrated the occurrence vividly.* ***The argument of Mr Naik, appearing for the appellant against acceptability of Witnesses 2 and 4 is that they were examined by the police under Section 161 CrPC on 6-10-1985 and 4-10-1985 respectively. This delay in examining***

> ***the two witnesses ipso facto cannot be a ground to discard their testimony, more so, when in the cross-examination of the witnesses, nothing tangible had been brought out to impeach their testimony.*** *On the other hand, the evidence of PWs 2 and 4 fully corroborates the reliable evidence of PW 1 and therefore, the courts below were justified in maintaining the conviction of appellant Ramesh of the charge under Section 302 IPC. In course of arguments, Mr Naik, learned Senior Counsel also raised a contention that the prosecution has not examined the independent witnesses though available and that an adverse inference should be drawn. But on going through the evidence on record, we do not find any material from which it can be said that the other independent witnesses were available and the same were not examined. That apart, PWs 2 and 4 are independent witnesses and, therefore, it is not necessary for the prosecution to multiply the witnesses. We, therefore, do not find any substance in the aforesaid submission of Mr. Bhimrao Naik.*

24. The Hon'ble Supreme Court has held in **Ambika Prasad & another Vs. State (Delhi Administration) 2000(2) SCC 646** that:-

> *"13. The learned counsel for the accused further raised the contention that there was delay in recording the statements of the injured witnesses, therefore, their evidence should not be accepted which also requires to be rejected. In Krishna Pal (Dr) v. State of U.P. 1996 SCC (Cri) 249 this Court rejected a similar contention of non-explanation by the prosecution as to why eyewitnesses had not been examined shortly after the incident and for inordinate delay in examining them, by holding that it would not be a ground to discard the convincing and reliable evidence adduced in the case. This contention is also considered by both the courts and has rightly not been accepted."*

25. In the case of **State of U.P. Vs. Satish 2005 SCC(Cri) 642,** the Hon'ble Supreme Court has held as follows:-

> *"18. As regards delayed examination of certain witnesses, this Court in several decisions had held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version become suspect. It would depend upon several factors. It the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.*
>
> *20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any affect on the credibility of the prosecution's evidence tendered by the other witnesses."*

26. In the case in hand, though there is delay in recording the statement under section 161 Cr.P.C. by the I.O. the defence has not asked to the I.O. as to why there was delay in the examination of witnesses. As such, the appellants cannot get any benefit therefrom. The evidence of Investigating Officer clearly reveals that he was posted in the police station. He remained involved in the investigation of this case and apart from that he was also busy in other duties. He was not asked as to why their statements were not recorded in time. There is no direct cross examination on this point. In view of this fact it cannot be held that the delay in recording the statements would result in

the acquittal of the accused. It is also pertinent to mention here that the statement of Mursalin PW6 was recorded on the same day. He has also mentioned the names of eye witnesses of the incident in his deposition.

> We, therefore, hold that the delay in recording the statement of the witnesses is not fatal to the prosecution case. In view of the above, the contention of the learned counsel for the appellants is not tenable.

27. It was further contended that the FIR was ante-timed and ante-dated in this matter. The learned counsel for the appellants submitted that there was inordinate delay in conducting the postmortem of the deceased. The postmortem was conducted on 04.11.1994 in the afternoon whereas the incidents took place on 03.11.1994 in between 12:30 to 1:30p.m.; there are over-writings and cuttings on the panchayatnama, as such, the entire story of prompt FIR has become doubtful. It was pointed out that the FIR did not contain that the appellants picked 'Palkati' (a sharp edged weapon) from outside the room and inflicted injuries on head and chest of Yasin. It was further pointed out that the theory of '*palkati*' in the hand of the appellant Shahid @ Kallu was introduced only to bring the ocular evidence in line with the medical evidence. It was contended that the FIR was not lodged at the time when it purports to have been written. Learned G.A. refuted the contention. The inquest report was prepared by Sukhvir Singh PW12 on the direction of Ramkumar PW11. The inquest reports

were started to be prepared immediately after reaching the spot. There were three murders at three different places, as such, it is natural that the inquest reports were prepared at three different places and it would have taken a considerable time. The postmortem was conducted at Haridwar. The dead bodies were sent to the hospital. PW12 has categorically stated in his evidence that when the panchayatnama of the dead bodies were prepared he had the copy of the FIR. It was further stated by PW12 that he also prepared the letters and other relevant documents at the spots. Sukhvir Singh PW12 has categorically stated in his evidence that he sent the dead bodies to the hospital. According to the prosecution, the dead bodies of the deceased were sent to the hospital and on the next day the postmortem was conducted. Generally, the postmortem is not conducted in the night hours and it is conducted in the day. It cannot be held that there was inordinate delay in conducting the postmortem. Whereas the cuttings made in the inquest report are concerned, S.I. Sukhvir Singh PW12 has categorically stated in his cross examination that in the inquest report of Anis Ex.ka.51, the name of ‘Hanif’ was wrongly written before the name of ‘Anis’ and the same was corrected by him. We have gone through the entire inquest reports. We hold that the cuttings in the inquest report as pointed by learned counsel for the appellants are of no avail. It appears that the person who prepared the inquest report on the instructions of the I.O. had not been diligent enough but for that reason we do not feel that the reliable and clinching evidence adduced in this case by eye-witnesses should be discarded. This is a remissness on the part of the

Investigating Officer, which does not help the appellants. The Apex Court has, while maintaining the conviction of the accused in **Karnel Singh Vs. State of M.P.** reported in **1995(5) SCC 518, 1995 SCC (Cri) 977 & 1995 CRL.L.J. 4173,** observed :-

> *"Notwithstanding our unhappiness regarding the nature of investigation, have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In case of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the Chaddi. That is the reason why we have said the investigation was slipshod and defective."*

28. The Hon'ble Apex Court has held in **Dr. Krishna Pal (supra)** that :-

> **"9. …… ……** The Investigating Officer in his deposition has also admitted that through mistake he omitted to mention the crime number in the inquest report. It appears to us that the Investigating Officer had not been diligent enough but for that reason we do not feel that reliable and clinching evidences adduced in this case by the eyewitnesses particularly by Dr Rajveer Singh should be discarded. In this connection, we may refer to a recent decision of this Court in *Karnel Singh* v. *State of M.P.1995 SCC (Cri) 977.* In the said decision, it has been indicated by this Court that in a case of defective investigation, it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of an erring Investigating Officer. As we do not find any reason to disbelieve the testimonies given by eyewitnesses of this case, we do no find any reason

to take a contrary view and to interfere with the impugned judgment. These appeals, therefore, are dismissed."

29. It has been held in **Chhotu Vs. State of Maharashtra 1987(4) SCC 533 & 1997 CRI.L.J 4394 (SC)** that :-

> *"That necessarily means that all of them were the most natural and probable witnesses to an incident that then took place near his house, notwithstanding the fact that they were not residents of that locality. It also requires to be mentioned here that if the Investigating Officer failed to seize the bloodstained clothes of PWs 3 and 8 and to promptly examine PW3, whose names as any eye witness was disclosed immediately after the incident, it only indicates remissness on his part but the evidence of PW3 and 8 was not in any way impaired thereby."*

30. It has been observed by the Hon'ble Supreme Court in **Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654** that in the instant case, the High Court found several disturbing features which indicated how the investigating officer had made out a new case to save the accused persons and to implicate the complainant party. Hence, the High Court analyzed the evidence of the eye witnesses with due care and caution. On finding the said evidence to be credible, the High Court upheld the conviction recorded by the trial court. Before the Hon'ble Supreme Court, the accused appellants challenged the conviction on the grounds (1) that the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased (ii) the pellets, wads and cartridges were not recovered from the spot, (iii) that the weapons of assault and the pellets were not sent for

ballistic examination, (iv) that the blood stained earth was not sent for chemical examination (v) that many persons who could have thrown light on the incident had not been examined, and (vi) that the evidence being that of highly interested and inimical persons, should have been discarded. Dismissing the appeal, it was held by the Apex Court that even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective.

31. The Hon'ble Apex Court in its latest decision in the case of **Rotash Vs. State of Rajasthan 2007 AIR SCW 44** has held that :-

> *"32. The investigation was not foolproof but then defective investigation would not lead to total rejection of the prosecution case.*
>
> *33. In Visveswaran v. State 2003 (6) SCC 73, this has held:*
>
> *Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that the approach required to be adopted by courts in such cases has to be different. The cases are required to be dealt with utmost sensitivity, courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in*

view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved."

32. It was further contended that the inquest report did not contain the details of the incidents. Learned G.A. refuted the contention. The Apex Court has held in **Radha Mohan Singh @ Lal Saheb Vs. State of U.P. 2006(2) SCC 450 :-**

"14. *The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law is it necessary for the person holding the inquest to mention all these details.*

15. *In Pedda Narayana v. State of A.P. 1975 SCC(Cri) 427 it was held that the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice, nor in law, was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt*

acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court. In Shakila Khader v. Nausheer Cama 1975 SCC (Cri) 379 the contention raised that non-mention of a person's name in the inquest report would show that he was not an eyewitness of the incident was repelled on the ground that an inquest under Section 174 CrPC is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in Eqbal Baig v. State of A.P. 1986 SCC (Cri) 232 that the non-mention of name of an eyewitness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence as the inquest report is not the statement of a person wherein all the names (the accused and also the eyewitnesses) ought to have been mentioned. The view taken in Pedda Narayana v. State of A.P. 1975 SCC(Cri) 427 was approved by a three-Judge Bench in Khujji v. State of M.P. 1991 SCC (Cri) 916 and it was held that the testimony of an eyewitness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. The nature and purpose of inquest held under Section 174 CrPC was also explained in Amar Singh v. Balwinder Singh 2003 SCC (Cri) 641. In the said case the High Court had observed that the fact that the details about the occurrence were not mentioned in the inquest report showed that the investigating officer was not sure of the facts when the inquest report was prepared and the said feature of the case carried weight in favour of the accused. After noticing the language used in Section 174 CrPC and earlier decisions of this Court it was ruled that the High Court was clearly in error in observing as aforesaid or drawing any inference against the prosecution. Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited viz. to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eyewitnesses or the gist of their statements, nor is it required to be signed by any eyewitness. In Meharaj Singh v. State of U.P. 1994 SCC(Cri) 1391 the language used by the legislature in Section 174 CrPC was not taken note of, nor the earlier decisions of this Court were referred to and some sweeping observations have been made which are not supported by the statutory provision. We are, therefore, of the opinion that the observations made

> *in paras 11 and 12 of the reports do not represent the correct statement of law and they are hereby overruled. The challenge laid to the prosecution case by Shri Jain on the basis of the alleged infirmity or omission in the inquest report has, therefore, no substance and cannot be accepted."*

33. Learned counsel for the appellants tried to emphasise that it has been stated in the evidence that the appellants caused fatal injuries by the firearms on the person of the deceased Yasin. It has come in the evidence that appellant Naved took '*Palkati*' (a sharp edged weapon) from the spot and caused injuries on is head and chest by the said 'Palkati'. It was further contended that the prosecution has introduced the case of Palkati after the postmortem report. The postmortem on the dead body of Yasin was conducted on 04.11.1994 at 1:15pm. According to the postmortem report, two injuries (injury no.1 & 7) were caused by sharp edged weapon. Learned counsel for the appellants emphasized that the prosecution has introduced the said Palkati at a later stage when the postmortem was conducted. Learned G.A. refuted the contention. It is true that the use for Palkati for causing the injuries on the deceased has not been mentioned in the FIR. It is pertinent to mention here that Mursalin PW6 who has lodged the report was not the eyewitness of causing injuries on the person of Yasin. He was told by the witnesses about the murder of Yasin. It is well settled position of law that the FIR is not the encyclopedia in which all the details should be mentioned. If the genesis of the incident has been mentioned in the FIR, it is sufficient. The FIR is lodged only to set the investigation in motion. It is not reasonably expected that the scared eye witness

especially who had lost his father and brother would be able to give meticulous and the precise account of details of weapons that landed on the deceased persons. The informant has only narrated the summary of the incident. It is also pertinent to mention here that Mursalin PW6 came to the village only to inform that his brother had been murdered by the appellants in the field. He was in a state of horror and terror. When he reached there he received the information that Yasin had already been shot dead and injuries had been caused on his person by the accused appellants. It was also shocking to him that when he heard that the appellants had murdered his father on the same day at a different place. In these circumstances, a person who has lost his near and dear in a short span of one hour would not be able to give minor details in the FIR. When the prompt FIR was lodged the informant would be extremely perturbed because his near and dear have been suddenly murdered. It is also pertinent to mention here that his statement under section 161 Cr.P.C. was recorded on the same day by the I.O. He has stated the entire incident. He has been cross examined at length but this contradiction that he was informed about the Palkati was not put to him. It can be concluded that Mursalin PW6 had stated under section 161 Cr.P.C. that the appellant Naved also caused the injuries on the person of the deceased Yasin by 'palkati'. It is not the case that *'Palkati'* was introduced only after the medical report was obtained. Mursalin PW6 has stated this fact on the same day when the incident took place. It cannot be said that the story of '*Palkati*' was introduced later on. Both the witnesses Mohd. Hashim PW1 and

Rahil PW2 have also corroborated the factum of Palkati in the hands of the accused Naved who caused injuries on the person of deceased. Thus, the evidence of the prosecution witnesses is credible and cogent.

34. It is further clear from the record that the FIR was recorded and thereafter the G.D. report in the police station was also prepared on the same day. The incidents took place in between 12:30 to 1:30 pm and the matter was reported to the police station at 2:20pm on same day. Mursalin PW6 has stated in his deposition that he immediately got scribed the report and went to the police station with Grampradhan Sirajuddin on his scooter. It further shows that the distance between the Gram Akbarpur and the police station is about 04kms. It cannot be held that it was impossible to record the FIR within the span which has been indicated in the FIR. In the case of **Darshan Singh another Vs. State of Punjab AIR 1988 SC 747,** it was seriously contended that if the incident has taken place at 7.30p.m. as mentioned in the FIR the report could not have been lodged at 8:30p.m. within one hour as in the FIR itself the distance of the police station from the scene of occurrence is recorded as 12½ kms and on this basis an argument was raised by learned counsel for the accused that the report appears to have been prepared later on and a false time has been mentioned in the report. In that case, it has been held as follows:-

> *"10. Instances of this filed that (sic) no relevant evidence was brought on record and not a single question was put to any witness or to Dalip Singh who made the First Information Report that he had noted the time of incident after seeing the watch*

and this was recorded in the First Information Report as 7:30p.m. It is also clear that there is nothing in his evidence to indicate that he and Gurnam Singh who went to the police station walked on foot and covered a distance of 12½ kimlometres because it is not in their testimony as to whether they went through the normal route or they went across the fields by short cut nor there is anything in the evidence that they did not take a lift in any vehicles. Learned counsel when confronted with this situation contended that the burden lay on the prosecution but it could not be disputed that if this was the contention of the defence that the report could not have been recorded at 8:30pm if the incident was at 7:30pm question to establish this should have been put in cross examination. It is apparent that there is no material to indicate that the time of incident when noted was 7:30pm it is precise time nor it is there in evidence as to whether the persons who lodged the First Information Report walked through 12½ kilometers. In absence of any material the only thing that appears is that immediately after the incident the report is recorded and this report contains a clear description of the incident corroborating the testimony of the eye-witnesses. The courts below, therefore, on consideration of the testimony of the eye-witnesses accepted their version and convicted the appellants as mentioned above."

In view of this, we do not find any force in the arguments raised by learned counsel for the appellants. The trial court has rightly rejected the said contentions and we are completely in agreement with the findings recorded by the trial court.

35. Learned counsel for the appellants contended that there was an inordinate delay in forwarding the FIR to the Magistrate concerned and it was received by the Magistrate very late. It was further contended that if there would have been a prompt report it should have been received by the Magistrate on the same day or on the next day. The prosecution did not explain the delay in sending the FIR to the court. The FIR has been recorded much later than one shown in the document and as such the very genesis of the prosecution case belies and cannot be relied upon to convict the accused persons. Learned G.A. refuted the contention. The incident took place on 03.11.1994 at three different places in between 12.30 to 1:30pm. The report shows that it was received in the court on 09.11.1994 whereas it was dispatched by the police station quickly. The entire prosecution case cannot be thrown out on this ground alone if the prosecution has produced reliable evidence to prove the guilt of the accused persons. The Hon'ble Apex Court has also held in ***State of Karnataka Vs. Moin Patel 1996(8) SCC 167; 1996 SCC (Cri) 632; AIR 1996 SC 3041*** *as below:-*

> *"16. The matter can be viewed from another angle also. It also already been found by us that the prosecution case that the FIR was promptly lodged at or about 1:30 am and that the investigation started on the basis thereof is wholly reliable and acceptable. Judged in the context of the above facts the mere delay in dispatch of the FIR - and for that matter in receipt thereof by the Magistrate – would not make the prosecution case suspect for as has been pointed out by a three-Judge Bench of this Court in Pala Singh Vs. State of Punjab, the*

relevant provision contained in section 157 Cr.PC regarding forthwith dispatch of the report (FIR) is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under section 159 Cr.PC and therefore if in a given case it is found that FIR was recorded without delay and the investigation started on that FIR then however improper or objectionable the delayed receipt of the report by the Magistrate concerned may be, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable."

36. It has been held by the Hon'ble Apex Court in **Munshi Prasad Vs. State of Bihar SCC(Cri) 2002 p/175** that:-

"13. In support of the appeal, a further submission has been made pertaining to the first information report (FIR). On this score the appellants contended that delayed receipt of FIR in the Court of the Chief Judicial Magistrate cannot but be viewed with suspicion. While it is true that section 157 of the Code makes it obligatory on the officer in charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of justice – if the court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, merely delay, which can otherwise be ascribed to

be reasonable, would not by itself demolish the prosecution case. The decision of this Court in Shiv Ram Vs. state of U.P. {1998(1) SCC 149; 1998 SCC (Cri) 278} lends support to the observation as above."

37. The same view has been taken by the Hon'ble Supreme Court in its latest decision in the case of **Rabindra Mahto & another Vs. State of Jharkhand 2006(3) SCC(Cri) 592.** The relevant portion is as follows: -

"19. There cannot be any manner of doubt that Section 157 of the Criminal Procedures Code requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons. He provisions of Section 157 CrPC are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at the subsequent stage of investigation. The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded. The decisions rendered by this Court and relied upon by the learned counsel for the appellant would only show that this will be a

material circumstances which will be taken into consideration while appreciating the evidence on record."

38. On due consideration of the submission of the parties and perusal of the aforesaid principle of law, we are of the view that the delay in sending the FIR to the Magistrate is not fatal and it cannot be concluded that the FIR has been recorded much later than one as shown in the FIR. Therefore, the contention raised by the learned counsel for the appellants has no force.

39. Learned counsel for the appellants contended that even assuming that the evidence of the prosecution is credible and cogent the appellants are entitled to get the benefit of doubt as there was no motive for them to cause death of the deceased persons. Learned G.A. refuted the contention. The prosecution has led the evidence that deceased Hanif and accused Islam @ Shamim are the real brothers. Naved is the son of Islam @ Shamim and he is the nephew of deceased Hanif. It has come in evidence that a partition took place between Hanif and Islam about 13-14 years ago. It has come in the evidence that there was a tube-well on the said property. The tube-well came in the share of Islam. The electric connection installed in the said tube-well was in the name of deceased Hanif before the partition. The electric connection was not transferred and there was an outstanding of Rs.31,000/- towards the electric bill for tube-well. The revenue department started recovery proceedings against Hanif. Hanif had to deposit the same. It is also in the evidence that deceased Hanif got disconnected the electric connection of the tube-well. As such, appellants Islam @ Shamim

and Naved were annoyed with the deceased persons viz. Hanif and Anis. Hanif was persistently demanding the said money from Islam but the appellants were not giving the said amount. So far as the motive for Shahid @ Kallu is concerned, the prosecution has led the evidence that accused Shahid @ Kallu was the step son of deceased Yasin. The appellant Shahid @ Kallu was claiming his share in the property and Yasin was not giving his share in the property. He started animosity against his step-father Yasin. Due to this, he committed his murder. Thus, the prosecution has proved the motive for committing the crime by the appellants. Assuming for the sake of argument that the prosecution has failed to prove the sufficient motive against the appellants. When the eyewitnesses of the occurrence consistently supported the prosecution case, the question of motive would have lost its importance. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. It is also well settled that establishment of motive is not sine qua non for proving the prosecution case. In the case of **Baboolal Vs. State of U.P. 2001 SCC (Cri) 1484,** the deceased was sitting inside the tea shop of one Abdul Nabi. On the opposite side of road, there was a sweetmeat shop and all the accused were sitting inside it. As the radio was being played on a high pitch, an exchange of words took place between those who

were sitting in the tea shop and the accused. The accused threatened PW1 and others for raising this petty issue. A little later the deceased reached there and on coming to know of the development of the incident, he expressed his resentment at the incident reaching that range on such a petty issue. On this, the accused moved forward with a pistol accompanied by the second accused and another person with daggers in their hands and fired upon the deceased. The Hon'ble Supreme Court has held as follows:-

> **"8.** Learned counsel rightly contended that on such a petty quarrel, no sensible person would have used such a lethal weapon and killed the victim. How the mind of an assailant reacted is not possible to be fathomed from a detached reflexion. As pointed out this Court in *Nathuni Yadav* v. *State of Bihar 1998 SCC(Cri) 992:*
>
> > "Many a murders have been committed without any known or prominent motive. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."

40. In the case of **Thaman Kumar Vs. State of Union Territory of Chandigarh 2003 SCC (Cri) 1362,** the Hon'ble Apex Court has held that :-

> *"18. Shri Sushil Kumar has drawn our attention to certain findings recorded by the learned Sessions Judge and has urged that he had rightly given benefit of doubt to the appellants and the High Court committed manifest error of law in reversing the aforesaid findings and convicting and sentencing the appellants while hearing an appeal against acquittal. The learned counsel has urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is true that the only witness examined on the point of motive, namely, PW 7 Sardara Singh, who is the brother of the deceased, turned hostile and did not support the*

prosecution case. In his statement under Section 161 CrPC he had said that the deceased used to get commission for bringing customers to the guest house and he owed about Rs 42,000 in that account and some dispute had taken place with the owner when he had demanded his money. However, in his statement in Court he denied to have given any such statement. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. In State of H.P. v. Jeet Singh 1999 SCC (Cri) 539 it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In Nathuni Yadav v. State of Bihar 1998 SCC (Cri) 992 it was held that motive for doing a criminal act is generally a difficult area for prosecution as one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act and such impelling cause need not necessarily be proportionately grave to do grave crimes. It was further held that many a murder have been committed without any known or prominent motive and it is quite possible that the aforesaid impelling factor would remain undiscoverable. In our opinion, in the facts and circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the

other reliable evidence available on record which unerringly establishes the guilt of the accused."

41. It was held by the Hon'ble Apex Court in **Yunus Vs. State of M.P. 2003 (1) SCC 425:-**

> *"The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is also well settled law that establishment of motive is not sine quo non for proving the prosecution case."*

42. The Hon'ble Apex Court has affirmed the above view in its latest decision in the case of **Bhimapa Chandappa Hosamani Vs. State of Karnataka 2007 (1) SCC(Cri) 456).** The Hon'ble Apex Court has held in **Ramkrushna Vs. State of Maharashtra 2007 AIR SCW 3134** that:-

> *"18. The High Court might not have dealt with the question of motive elaborately but when the presence of the appellant with Balram has been established, motive takes a back seat. Appellant must have come to the place of occurrence. He came with a knife. The knife injuries were found. Even if the prosecution has not been able to establish as to the exact role played by each of the accused, the fact that both the accused had common intention to commit the crime stood established. Submissions of the learned counsel for the State in this behalf are of some significance. The learned Trial Judge as also the Trial Court cannot be said to have*

committed any error in relying upon the testimony of the P.W.3 in part. It is in our opinion permissible in law. (See Soma Bhai Vs. State of Gujarat AIR 1975 SC 1453)"

Therefore, we do not find any force in the contention raised by learned counsel for the appellants.

43. It was further contended that the FIR was scribed by one Mubarik a relation of Mursalin PW6. Non-examination of Mubarik is fatal to the prosecution case. Learned G.A. refuted the contention. It is apparent from the prosecution evidence that the scribe of the report is not the eye witness of any of the three incidents. The report has been written by Mubarik on the dictation of Mursalin PW6. It was held in **Anil Kumar Vs. State of U.P. 2003 SCC (Cri) 770:-**

"7. Mr Tripurari Ray has submitted that both the trial court and the High Court have erred in convicting the appellant. He submitted that in the FIR the appellant has not been named. He submitted that the scribe of the FIR was one Mr Umesh Kumar Dixit who was the nephew of the complainant. He submitted that Umesh Kumar Dixit was a classmate of the appellant and he knew the appellant. He submitted that as Umesh Kumar Dixit knew the appellant he would have named the appellant in the written complaint if the appellant had actually been present at that time. He submitted that the prosecution did not examine Umesh Kumar Dixit and therefore the appellant has been gravely prejudiced. He submitted that an adverse inference must be drawn against the prosecution that if Umesh Kumar Dixit had been examined the appellant would have been able to establish that he was not present at the time of the

incident. We are unable to accept the submission. Umesh Kumar Dixit was not an eyewitness. He did not see the incident and did not know who were present or who the assailants were. He only scribed what was told to him by PW 1. It has come in the evidence of PWs 1, 2 and 4 that they did not know the appellant prior to the incident. They therefore could not have named him in the FIR. As Umesh Kumar Dixit was not an eyewitness to the incident there was no necessity to examine him. Umesh Kumar Dixit could have showed no light. He could not have stated whether the appellant was present or not. Therefore no prejudice has been caused to the appellant."

We, therefore, do not find any force in the contention raised by learned counsel for the appellants.

44. Learned counsel for the appellants contended that the evidence of eye-witnesses is belied by the medical evidence. It was further pointed out that PW1 has stated in his deposition that deceased Yasin was sitting in the premises of Mohd. Hashim PW1. The appellants-accused came there and started firing upon him. But, Yasin (deceased) ran away towards the north and the appellants chased him. There was also a room near the house of Mohd. Hashim PW1 and it had a north opening and the deceased went towards that room. The appellants again fired upon him and the deceased fell down due to the injuries sustained by him. It was further contended that the firearm injuries were caused from behind. The deceased should have sustained firearm injuries on his back. It was pointed out that Yasin has sustained the injuries on his head, skull, chest and other front parts of his body. Learned G.A.

refuted the contention. It cannot be ruled out that when the assailants fired upon the deceased he might have turned around. When he was trying to escape himself from the firearm injuries, Yasin deceased; it would be natural he would see the accused as to how the assailants are chasing him. It is also possible while taking the shelter he would have turned around a little to enter into the room and at that time he would have sustained such injuries. There was no effective cross examination by the defence on this aspect. The medical evidence did not belie the prosecution case rather it was in support of the prosecution case. The value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by the eye-witnesses, the testimony of eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. In view of the above, the contention raised by the learned counsel for the appellants has no force.

45. Learned counsel for the appellants contended that the presence of Rahil PW2 at the spot is very doubtful because deceased Hanif was his father and he saw the entire incident but he did not try to intervene in the matter and did not try to save his father from the appellants. It was further contended that the conduct of Rahil PW2 apparently reveals that he was not present at the relevant time and he had not seen the incident, especially when he is the son of the deceased.

Learned G.A. for the respondent-State refuted the contention. It has come in the evidence that Rahil PW2 was not having any arm at the time of incident. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, some become speechless and some stand uprooted from the spot. There is no set of rules of natural conduct. The appellants-accused were armed with deadly weapons and it is natural that Rahil PW2 could not come forward to save his father, particularly when they were causing murderous assault upon the deceased. Only on the ground that Rahil PW2 remained silent and he did not intervene in the melee cannot be concluded that he was not present at the spot. In the case of **Ashok Kumar Pandey Vs. State of Delhi 2002 (4) SCC 76 & 2002 SCC(Cri) 728,** the father of the deceased was eye-witness of the incident and he was unarmed. The father of the deceased heard cries of his daughter whereupon he immediately rushed towards the place of occurrence and found that the accused was inflicting stab wounds on his daughter with a knife while she was bleeding profusely. The accused came towards him in a state of anger with knife in his hand and the eye-witness retraced his steps. At this stage, the accused ran away from the place of occurrence. It was pointed out that the father of the deceased saw the accused inflicting injuries on his daughter and he did not take steps to rescue her. It was submitted that the conduct

of the eye-witness was unnatural, which shows that he was not present at the place of occurrence. In these circumstances of that case, it was held by the Hon'ble Supreme Court that it cannot be said to be unnatural conduct if he could not take steps to save the life of his daughter as he being unarmed, as an ordinary normal human being, could not have taken risk of his life at the hands of the accused, which was so imminent. In the case of **Balbir Singh & others Vs. State of Punjab & others 2005 (9) SCC 299 & 2005 SCC (Cri) 1245,** the eye-witness (son of the deceased) and the deceased were coming back from the field. The accused person emerged near the field and inflicted fatal injury on the person of the deceased with deadly weapons. The deceased died at the spot. It was pointed out that since the son of the deceased did not intervene in the fight, hence his presence was doubtful. The Hon'ble Apex Court has held that the evidence of son of the deceased cannot be disbelieved for not having intervened in the melee as there were four assailants who were armed with weapons. In view for the above, the contention raised by the learned counsel for the appellants has no force.

46. Learned counsel for the appellants vehemently argued that R. K. Singh, Investigating Officer (PW11) arrested the appellant Islam @ Shamim and Naved on 06.11.1994 and he also recovered a double barrel gun and three empty cartridges and one belt from the possession of the accused Islam @ Shamim. It was further contended that the I.O. had not taken any public witnesses at the time of arrest of Islam @ Shamim and Naved and at the time of recovery of

double barrel gun and cartridges from their possession. It was further contended that the testimony of R. K. Singh, I.O. (PW11) being a police official alone should not be sufficient that the recovery of the said articles was made from their possession. Learned counsel for the appellants contended that the accused Shahid @ Kallu was arrested on 05.11.1994 in a lonely place. It was further contended that the police has recovered a country-made pistol and cartridges from his possession. It was further contended that no public witnesses were taken for the recovery of said articles from the possession of the accused. All the witnesses of the recovery shown in the recovery memo are police personnel and in absence of any public witness it becomes doubtful. Learned G.A. refuted the contention. Whereas the appellant Shahid @ Kallu is concerned, the arresting officer has categorically stated in his statement that he tried to take the public witness for the recovery but he could not get the public witness at the spot. He has also explained in his evidence that the arrest was made suddenly in the jungle and there were no public witnesses available at the spot. Whereas the recovery of double barrel gun from the possession of Islam @ Shamim is concerned, the prosecution has also led the evidence of R. K. Singh, Investigating Officer (PW11). R. K. Singh PW11 has testified that he had made both the recoveries from the possession of the appellants-accused. In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their

testimony cannot be relied upon. It is not a proper judicial approach to distrust and suspect upon R.K. Singh PW11 without good grounds. It will depend upon the facts and circumstances of each case and no principle of general application can be laid down. The ground realities cannot be lost sight of that even in normal circumstances members of the public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. It is quite natural for members of the police to have avoided getting involved in a police operation for search or arrest of a person. It is noteworthy that during the course of the cross examination of the witnesses the defence did not even give any suggestion as to why they were falsely deposing against the appellants. There is absolutely no material or evidence on record to show that the prosecution witnesses had any reason to falsely implicate the appellants.

47. Learned counsel for the appellants contended that the prosecution has sent the empty cartridges recovered from the place of occurrences, DBBL Gun and cartridges recovered from the possession of Islam and the country-made pistols recovered from the possession of Shahid @ Kallu and the cartridges to the Forensic Laboratory. It was contended that the report contains so many cartridges and it cannot be identified by the I.O. himself that which empty cartridges were recovered from the place of incident and as such the comparison made by the expert does not support the prosecution. The prosecution miserably failed to connect the firearms by which the deceased were shot dead. Learned G.A. refuted the contention. This is

only remissness on the part of the investigation. It is pertinent to mention here that the report of chemical examiner is not a substantive piece of evidence. It is only a corroborative piece of evidence. If the ocular testimony is cogent and convincing there is no requirement to seek the corroboration from other evidence. It was further pointed out that the country-made pistol which was used by Naved during the incidents was not recovered. It is well settled position of law that if the weapon used in the incident has not been recovered during the investigation the same cannot be a factor to discard the ocular testimony of the witnesses. It has been held by the Hon'ble Apex Court in **Anwarul Haq Vs. State of U.P. 2005 SCC (Cri) 1629** :-

> *"15. Eyewitnesses in the present case have described the knife, and merely because the knife has not been recovered during investigation same cannot be a factor to discard the evidence of PWs 1 and 2. Wounds noticed by the doctor (PW3) also throw considerable light on this aspect. The doctor's opinion about the weapon, though theoretical, cannot be totally wiped out. In that view of the matter the appellant has been rightly convicted under Section 324 IPC."*

48. Appellant Naved has taken a plea in the grounds of appeal filed before this Court that he was of tender age at the time of alleged offences. He has stated in his statement recorded under section 313 Cr.P.C. that he was about 13½ years of age at the time of commission of offences. In support of his plea, he has not filed any document or any other evidence so as to conclude that he was juvenile at the time of incidents. It is apparent from perusal of the record that this plea was not raised in the trial before recording the statement under section 313 Cr.P.C. We are aware of the fact that even

if the said plea has not been taken in the trial court, the plea can be taken at the time of appeal. The appellant Naved in the trial eventually on 22.10.2001 was found guilty for the commission of offence. After convicting him, the trial court has observed as follows:-

> "अभियुक्तगण के विद्वान अधिवक्ता ने तर्क प्रस्तुत करते हुए कहा कि नवैद अभियुक्त घटना के समय साढे अठारह साल लगभग की उम्र का था, अपने पिता के द्वारा शासित होता था, वह घटना के तथ्यों और परिस्थितियों के बारे में पूर्ण रूप से जानकारी नहीं रखता था।"

49. It is apparent from the aforesaid recital that he has taken a plea that he was about 18½ years of age. The benefit under the Juvenile Justice Act 1986 can only be given if he was below 16 years of age at the time of commission of the offences. The incidents took place on 03.11.1994 and the Juvenile Justice Act 1986 was applicable at that time. Now, the Juvenile Justice Act 1986 has also been repealed by the present Act i.e. Juvenile Justice (Care & Protection of Children) Act 2000. The said finding has not been challenged before us and the plea has not been seriously contested before us. In view of the above, we do not find any merit in this plea that the appellant Naved was juvenile at the time of commission of offence.

50. After considering the entire evidence, we find it to be implicitly credible and cogent. The presence of the eye-witnesses at the place of occurrences was explained by the prosecution and their presence is natural at the spot. The manner of the assaults as described in the evidence is also corroborated by the medical evidence. The F.I.R. was lodged with

promptitude. So far as the direction of injuries on the persons of deceased is concerned, the opinion of the doctor is that the ante-mortem injuries were possible at the time of occurrences.

51. In view of the foregoing discussion, we are completely in agreement with the findings recorded by the trial court. We are of the considered view that the trial court has rightly convicted and sentenced the appellants. Therefore, we hold that the prosecution has established the guilt beyond reasonable doubt against the appellants and there is no infirmity in the judgment passed by the trial court.

52. Hence, the appeals are dismissed and the conviction and sentences awarded by the Trial court against the appellants are confirmed.

53. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within two months.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 07th August, 2007
LSR